



WHEN GOOD BUYS GO BAD

Keith Stuart got stung in an online auction, but he fought back. Learn from his experience and find out how to make sure the same thing doesn't happen to you

Online shopping is a familiar part of all our lives. When we're not grabbing our credit cards and hitting online stores, we're scanning auction sites for last-minute bargains. The Office of Fair Trading estimates that web users spend more than £30 billion a year online. At any one moment, two million items are listed on eBay in the UK.

Most of these transactions go smoothly, but for a significant minority a purchase or auction bid can turn into an expensive nightmare. Goods that never arrive, phishing scams and outright fraud are just a few of the dangers of buying online. When it all goes wrong, many of us haven't a clue what to do. Even the computer-savvy can find themselves out of pocket.

I know this from personal experience. For the past six months I've been engaged in a frustrating, often bewildering battle to secure a refund after winning an eBay auction and never receiving the item. I'm not alone. Which? estimates that an average of 200 fraudulent transactions take place on eBay.co.uk every day.

The good news, as my experience shows, is that if an unscrupulous seller catches you out, there's lots you can do to get your money back, and to make sure it never happens again.

EXCUSES, EXCUSES

In July, I bid on a MacBook computer from a private seller with a small amount of positive

feedback. The item description was well written and thorough. The seller had answered several technical questions from other potential bidders. It seemed like a legitimate auction. The only slight concern was that the seller had used a stock image of a MacBook rather than a photo of his own machine. You should insist on seeing a photo of the item for sale from private sellers who aren't dealing with hundreds of units of the same hardware.

Several days later I won the auction and settled up to the tune of £480 using PayPal. Most of the payment came from funds in my PayPal account, but it probably would have been more sensible to pay the entire balance by credit card, thereby involving my card issuer in the debacle. Purchases made through a payment system such as PayPal are not covered by the Consumer Credit Act of 1974, so you can't claim the money back from the card company. However, if you used a credit card to credit your PayPal account, the issuer may be willing to instigate a 'chargeback', in which the disputed funds are removed from the merchant's bank account and refunded to the buyer. You'll need to contact your card issuer directly about this.

A fortnight after my payment, the computer hadn't shown up. The seller emailed with a string of excuses – he was busy, he was in London, he was having a family crisis. In one email a few weeks after the auction had ended

he claimed that his neighbour was at the post office with the MacBook to arrange next-day delivery. Somehow his friend never made it to the counter – the computer didn't arrive. The seller was either chronically disorganised, an inveterate liar or a small-scale conman seeking to make a quick £500. Either way, I'd been had.

FROM DESPAIR TO DISPUTE

When an eBay transaction goes bad and the other party is ignoring your emails or phone calls, the first step is to open an 'item not received or significantly not as described' dispute in eBay's Safety Centre. This is an online mediation process, designed to encourage



▲ eBay takes fraud very seriously and provides plenty of advice to help users avoid scams



◀ The Citizens Advice Bureau offers free legal advice from its 3,000 branches, as well as general advice online

constructive communication between the buyer and seller. If the five-step procedure fails and your transaction is deemed eligible, you can fill in a Standard Purchase Protection Programme claim form to seek reimbursement from eBay. You may need to submit a proof of payment and other forms of authentication. The maximum amount you can receive is £105.

If, like me, you paid with PayPal, you'll automatically be routed to the PayPal resolution centre, which provides a similarly structured environment for the buyer and seller to communicate. You get 20 days to exchange messages and negotiate a favourable outcome. If that doesn't happen, you can choose to escalate the dispute to a PayPal claim.

At this stage PayPal takes over. It reviews the communications so far, asks for a proof of purchase or other evidence if necessary and decides on a suitable outcome. In my dispute, the seller managed one final promise to provide a refund and then promptly disappeared, so I entered a claim. PayPal emailed nine days later with a resolution in my favour. So I was about to get my money back, right? Wrong.

The PayPal Buyer Protection service offers up to £500 reimbursement for non-delivered goods, or goods that vary significantly from the seller's description. Buyers and sellers in some countries are excluded from this, so read the terms and conditions carefully. However, to qualify for this level of protection, the seller must have a 98 per cent positive feedback rating and at least 50 feedback points. Mine didn't. Consequently, PayPal credited me with just £150, promising to make its 'best efforts' to recover the rest of my money. However, when I rang PayPal's customer helpline, I was told that these efforts would involve emailing the seller occasionally and reminding him of the debt.

PayPal won't comment on its procedure or reveal the details of its debt collection policies because the information could be of use to scammers. So it's possible that PayPal was doing something but couldn't tell me. I haven't heard anything since, so I assume it had no luck.

PayPal did freeze the seller's account. This means that if the seller were to provide a refund, they would have to send a cheque to the company's headquarters and then contact it again to authorise the transfer to my account.

I FOUGHT THE LAW

Next, I visited the website of my local police force and reported the incident through an internet crime form. Most forces provide

information about eBay fraud on their sites and have officers trained and experienced in such cases. You can also phone your local station or pop in and ask to report the incident.

What happens next depends on the exact nature of your complaint, and the policies and resources of your local police authority. In my case, a couple of days after filling in the online form I was called back and asked for more details of the transaction. A day later I received another call, this time from a fraud squad detective at my local station. He apologetically explained that as an isolated incident, the situation didn't really merit a criminal investigation – it was a civil matter and would need to be pursued through the county court as a small claim.

Clive Freedman, a legal expert from the Society for Computers and Law, clarifies the situation. "It is a criminal offence for a person to put an item up for sale on eBay and then dishonestly to decide to keep the payment without delivering the goods. But where the seller is a private individual who only sells on eBay very occasionally, there could be all sorts of reasons why the seller may have failed to deliver the goods or repay the price. Even if the reasons given are not true, they could sound plausible enough for the seller to be given the benefit of the doubt in a criminal court. In the circumstances it would be common for the case not to look strong enough for the authorities to want to prosecute."

What I discovered, however, was that the 2006 Fraud Act, which came into effect in January 2007, should give the police in England and Wales more room for manoeuvre when dealing with such cases – it's just that they lack the resources to do so. As Detective Sergeant

Dick Bollard of the Sussex Major Fraud Unit explains, "The Fraud Act doesn't really give the police any additional powers, although it creates additional offences for which there are powers of arrest. Instead, it moves the goalposts in terms of proving a case, and it means that a lot more of what is reported to us can now be treated as a crime. To put it simply, we no longer need to prove that a victim has been deceived or has lost money, we just need to prove that this was the intention of the offender. This allows us to treat as a full offence what once would have been classed as an attempt at deception. However, our resources have not changed – we still have the same number of officers working on fraud cases, so we still need to filter the cases to ensure best use of our resources."

I was on the borderline of what the police felt they could investigate, but they were too busy to do so, at least for a £500 computer.

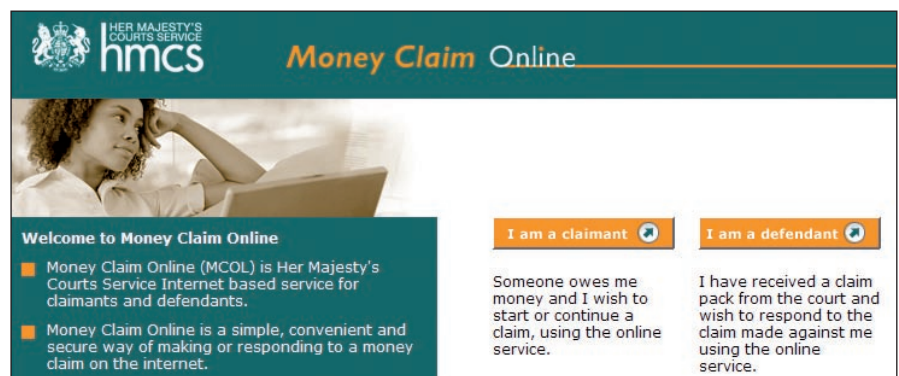
The Fraud Act has other ramifications for online shopping. Importantly, victims of credit or debit card fraud must now report the incident to their bank rather than the police. The bank will then involve the police if necessary. Some see this as a positive development, cutting down on the bureaucracy involved in processing fraud investigations and removing some of the hassle for the cardholder. Others complain that it amounts to the privatisation of the judicial system, allowing banks to control the types of frauds that get reported and investigated.

SOUND ADVICE

While waiting for the police to dismiss my report, I also called in at the Citizens Advice Bureau, which offers free legal advice from more than 3,000 locations throughout the UK. Naturally, as a registered charity that relies largely on volunteers, it's understaffed and overworked. You can expect to wait for an hour or so to see an adviser, and even then your initial visit will be a ten-minute 'diagnostic session' designed to gauge the nature of your enquiry.

Some branches also run telephone advice lines that offer a similar gateway assessment of your needs. Whichever route you choose, the chances are you'll be handed the Citizens Advice guide to buying over the internet, which contains useful information on dealing with online retailers, but not much on failed eBay transactions with private sellers.

The adviser also suggested that I phone Consumer Direct, a government-funded service that works alongside Trading Standards to offer information and advice on consumer issues. If anything goes wrong with a purchase and your complaints to the trader have gone unanswered,



▲ Start your small claims court proceedings online with the HMCS at www.moneyclaim.gov.uk



GETTING YOUR MONEY BACK

this should be your first port of call. They'll take down all the details, give you a case number and, if necessary, refer you to your local Trading Standards office, which may well investigate. Again, this will happen only if there's evidence of systematic fraud involving a group of victims. For me they could advise only one course of action – the small claims court.

I also checked out some of the many forums dedicated to PayPal and eBay. The auction site's own forum at <http://forums.ebay.co.uk> is the obvious choice, but the likes of www.auctioncut.com, www.auctionbytes.com and www.paypalsucks.com provide valuable opportunities to swap experiences and information with other users. However, they can also be rather defeatist. I saw dozens of posts suggesting that the small claims procedure is expensive, time-consuming and not worth bothering with. Hardly the most constructive advice.

In fact, starting the process of taking someone to court is comparatively painless. Before you even start, you need to send the seller a 'letter before action', which outlines your grievance – including details of the claim and any previous communication between the two parties – and makes clear your intention to begin legal proceedings. You should also provide a deadline of at least two weeks for the recipient to resolve the matter.

If this fails you can begin your claim online at www.moneyclaim.gov.uk, as long as the defendant is a resident of England or Wales. Charges depend on the amount you're looking to recover (contact your local county court for details), and what happens next is governed by the defendant's response. Receiving official notification from the court may well be enough to scare them into action. You can read more about the small claims process in our feature, *Shopper's Guide to the Small Claims Court*, which is included as a PDF on this month's cover disc.

If you're in dispute with a business trader rather than an individual, there are alternatives to court action. Indeed, the court will expect you to investigate alternative dispute resolutions (ADRs), perhaps in the form of mediation or arbitration. If the company belongs to some kind of professional organisation or institute, contact it and explain your situation. There may also be an ombudsman to complain to. If the transaction is on eBay you could use an online dispute resolution service such as Square Trade (www.squaretrade.com). You'll find a list of regulatory bodies at www.howtocomplain.com and there are details of trade associations throughout the UK at <http://tinyurl.com/yh2rer>. The website of Her Majesty's Courts Service also has a guide to ADR and some useful links at <http://tinyurl.com/2lkr4r>.

THE HUNT BEGINS

The key problem in my case was finding the seller. As I paid electronically he never provided his address, and eBay refused requests to relinquish it in accordance with its privacy policy. The auction site does provide a Find Contact Information feature, which allows you to input any user ID and access the user's contact name and phone number. If they're not answering the phone, however, you're stuck. eBay will also share information with the police if a fraud investigation demands it (<http://tinyurl.com/2huw4g>). This isn't much help if the police aren't interested in your case.

The law's an asset Legal help for buyers

If you get into a dispute with an online retailer or a professional eBay trader, you are protected by a range of consumer laws.

THE SALE OF GOODS ACT, 1979 (AMENDED 1994 AND 2002) AND THE SUPPLY OF GOODS AND SERVICES ACT, 1982

These provide our statutory rights. They dictate that any goods bought from an online business (or high street shop) must match the description provided, be of satisfactory quality and be fit for their intended purpose. If goods do not conform to contract at the time of sale, the customer can request their money back within a reasonable time. Unfortunately, you have considerably less protection when buying from an individual. Here, the Sale of Goods Act merely specifies that the description of the goods must match the items for sale.

DISTANCE SELLING REGULATIONS, 2000

These apply when you buy goods or services over the internet or by mail order, telephone, interactive TV or fax. The regulations specify that a business must provide clear information about products, including delivery costs, as well as full contact details of the supplier. The goods must be delivered within 30 days unless you've agreed otherwise. Finally, there's a seven-day 'cooling off' period that allows you to cancel your purchase and receive a full refund. However, certain goods such as perishables, CDs, DVDs, personalised items and magazines are exempt from this. Goods won at auction are also exempt from these regulations, although this does not mean you're on your own if something goes wrong. As Richard Webb, a Group Manager of

Community Safety at Trading Standards explains, "Auction buyers are still protected in many ways. It is an offence to misdescribe an item on an auction site or to take money for items you have offered to sell but cannot provide. It is also illegal, for example, to sell counterfeit goods by way of auction sites."

Furthermore, 'buy it now' items run by business sellers on eBay are covered by the Distance Selling Regulations, so you have the full roster of rights in that instance.

CONSUMER CREDIT ACT, 1974

When making a purchase of between £100 and £30,000 with a credit card, Section 75 of the Consumer Credit Act states that if something goes wrong with the transaction (for example, the goods are never delivered or the company goes bust), you can claim your money back from your credit card company. A recent clarification of Section 75 also confirmed that card users have this protection when shopping abroad as well as in the UK (see www.tradingstandards.gov.uk/consumers/ceurope.cfm).

EU DIRECTIVE ON UNFAIR COMMERCIAL PRACTICES, 2008

This represents a change in legislative framework and is due to take effect in 2008 in the UK. "The Directive creates some new general provisions that require businesses to trade fairly," says Webb. "They ban misleading actions, which includes any misleading information in advertising and marketing materials, create criminal offences for omitting material information from advertising and ban some specific practices. These provisions apply equally to online transactions and those completed face to face. Hence there will be a wider range of protections for those buying online."

Determined to have my day in court, I sent eBay one last email explaining my intention to pursue the matter through the small claims court and practically begging for the seller's address. The company relented – in a way. An email from its Trust and Safety office promised that I would be provided with the information I needed if my solicitor contacted its legal department in Bern, Switzerland. Unfortunately, employing a solicitor would be pointless, as the fees would swallow up most, if not all, of the amount I was owed.

This is probably the point at which many people give up, writing off the whole thing as an expensive learning experience. But several avenues of investigation are open from here and it's worth persevering. First, check the user's feedback to see if they've bought anything through eBay. The seller in that transaction will probably have their address – a polite email may be enough to secure it from them. If they're a trader they are obliged under the Data Protection Act to take care with customer details, but passing on an address in this context is not a criminal offence.

If there are other aggrieved buyers, you should email them all, get together and contact trading standards as a group. A criminal investigation is much more likely when several

victims are involved. Admittedly, it's doubtful that a prosecution will directly result in compensation for consumers, but Trading Standards will assist you in pursuing your claim through the small claims court.

Alternatively, if your seller uses a personalised domain name, their postal address may be in the DNS records. A free domain name look-up service such as www.who.is can give you access to this information. However, individual users can have their postal details removed from the records, or may simply provide a dummy address. In my case, the seller used several emails, all of them on large domains and ISPs such as Google Mail and AOL, which are pretty much untraceable for the layman. However, his account name for one of the addresses looked as if it might be the name of a company. I Googled it and discovered that, yes, it was some sort of recruitment consultancy and it was based in Glasgow, the city from which my seller registered his presence with eBay.

From here, I headed to the website of Companies House (www.companieshouse.gov.uk), which stores information on every limited company in the UK. If you click on WebCheck you can do a quick free search for basic information, including a postal address. This is a sound course of action whenever you're dealing



▲ Find out a company's address, and even details of its accounts, from the Companies House site

with an unfamiliar online retailer. If they have an address in the UK, you know you can trace them if things go wrong. Should you want to know more, you can also purchase a company's latest accounts and annual returns from the site.

The firm I checked out was not listed at Companies House, but it had its own website. I ran the URL through a domain search and found the address of the person who registered the site. The only problem was that his name didn't match my seller's. Unperturbed I entered my seller's name into 192.com, which compiles data from various sources including directory enquiries, census records and electoral rolls. And there he was; listed in the 2007 electoral roll for Glasgow, sharing a flat with the owner of

the company domain name. With an address, I could take him to court and claim my money.

That's exactly what I did. As he was based in Glasgow I had to go through the Scottish Courts system (www.scotcourts.gov.uk). This is fundamentally similar to the setup in England and Wales but with myriad administrative differences. There's currently no option to begin a claim online, but you can download the relevant form to fill in (it's very short) and several PDFs offer information on the small claims process. I sent off my form with the £45 fee and a few days later I received notification of a return date (the date by which the defendant had to respond to the claim) and a preliminary hearing date.

Later, the court wrote to me again informing me that a summons had been served on my seller and that I should phone the day after the return date to find out the defendant's (or 'defender' in Scottish legal parlance) response. When I rang I discovered that the seller had admitted liability and had requested to pay within two weeks. I had the option to refuse this request and force a court hearing, or accept it and inform the court that a hearing would not be necessary. I chose the latter, if only to avoid the long journey to Glasgow.

The seller still hasn't paid. I am now in the process of employing a Sheriff's Officer (a bailiff, in other words) to collect the debt. If the seller disappears from his current location, one further

course of action is to hire a private investigator to trace him. Two industry bodies – the Association of British Investigators (ABI) and the Institute of Professional Investigators – provide lists of accredited companies. It should cost around £100 to carry out a trace. It's a lot of bother for £330, but it's a matter of principle.

Of course, my experience is rare and most transactions are hassle-free. PayPal and eBay are working hard to reduce fraud, and they provide a lot of information about how to spot phishing scams and other unscrupulous practices. A quick video guide from PayPal is available at <http://tinyurl.com/2dvg3k>. PayPal has also worked with companies such as Microsoft and Yahoo! to tighten security and improve user knowledge.

It is pretty easy to remain safe when shopping online. Only go to retailers you trust or that friends have recommended. With eBay, you're safe if you bid only from traders that exhibit the PayPal Buyer Protection shield. But really, this is a little disingenuous. eBay is meant to be about trading with other users on the basis of trust. What hope does a new seller have if they want to sell a computer and find they have to make 50 other transactions first in order to be trusted? In these cases the best guide is the old legal term caveat emptor – buyer beware. Feel free to take a risk on new sellers, but make sure it's a risk you can afford to walk away from empty-handed. Either that or get ready for a long, lonely fight. **CS**

Cart unawares Tips for safe online shopping



Before you shop, ensure that your PC has a firewall and up-to-date anti-virus software. Go into your browser settings and select the highest level of security and notification.



Pay with a credit card rather than a debit card. You'll be protected under the Consumer Credit Act 1974 if the transaction goes wrong. The Association of Payment Clearing Services (APACS) also suggests that you use a separate credit card specifically for online transactions.



Sign up with an identity-checking service such as Verified by Visa or MasterCard Secure Code, which can offer some protection against unauthorised use of your credit card.



Know who you're buying from. Check that the site provides a postal address (not a PO Box) and research this address at Companies House. Find out whether the site is a member of an accreditation scheme such as Internet Shopping is Safe or Safebuy.



When inputting personal details, look for HTTPS in the address window and the padlock or unbroken key symbols in the status bar. These denote a secure connection.



Check the terms and conditions. Is postage included in the cost? Do you have to pay for postal insurance? What is the seller's returns policy?



On eBay, beware of second-chance offers. These can be a phishing scam used to obtain your credit card details. Legitimate second-chance offers come through the 'My Messages' section of your My eBay page, and never through a separate email. For more information on this, visit <http://tinyurl.com/y28xqr>.



Never use money transfer services such as Western Union to pay for goods. There's no way of getting your money back if the deal goes bad. If a seller asks you to pay this way, they're probably a crook.



Whenever you're shopping online or bidding for goods on eBay, keep hold of everything to do with the transaction – the order confirmation, any emails the company sends you and any communications between you both. These documents will be essential if the transaction goes wrong and you need to claim the money back. Also, print out any important details from the website, such as the returns policy, terms and conditions, postal address and so on. The site may well be taken down if the trader is in trouble, and you'll have nothing to work with.



Get used to checking for evidence of fraud. Scrutinise your bank and credit card statements for any unauthorised activity and check your credit rating at least once a year through services such as www.experian.co.uk, www.equifax.co.uk or www.callcredit.co.uk.

Further information

Consumer Direct (08454 040506)

Consumer advice line, which last year received over 3,700 complaints and enquiries about online auctions

Community Legal Service (0845 3454345)

Free independent legal advice

Citizens Advice Bureau (www.adviceguide.org.uk)

CAB's online service has a helpful guide to your legal rights on internet auction sites

Cardwatch.org.uk

The UK banking industry's card fraud awareness initiative

Getsafeonline.org

Lots of good online shopping advice

Home Office guide (www.identity-theft.org.uk)

Guide to protecting yourself against identity theft

APACS (www.banksafeonline.org.uk)

How to spot scams and cons online, plus general tips for safe surfing

CIFAS (www.cifas.org.uk)

The UK's Fraud Prevention Service provides lots of tips on safe surfing and fraud spotting

The Office of Fair Trading (www.oft.gov.uk)

Lots of clear, easy-to-read information about your consumer rights

Trading Standards (www.tradingstandards.gov.uk)

Information on your rights as a consumer